NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Aimbridge Employee Service Corporation d/b/a Aloft Chicago O'Hare and UNITE HERE Local 450. Case 13-CA-45561

January 29, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBER SCHAUMBER

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed by the Union on October 6, 2009, the General Counsel issued the complaint on November 27, 2009, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to bargain following the Union's certification in Case 13–RC–21849. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); Frontier Hotel, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint, and asserting affirmative defenses.

On December 17, 2009, the General Counsel filed a Motion for Summary Judgment. On December 23, 2009, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response.

Ruling on Motion for Summary Judgment¹

The Respondent admits its refusal to bargain, but contests the validity of the certification on the grounds that

¹ Effective midnight December 28, 2007, Members Liebman,

Schaumber, Kirsanow, and Walsh delegated to Members Liebman,

Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kir-

sanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Liebman and Member Schaumber constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act. See *Teamsters Local 523 v. NLRB*, _____ F.3d _____, 2009 WL 4912300 (10th Cir. Dec. 22, 2009); *Narricot Industries, L.P. v. NLRB*, 587 F.3d 654 (4th Cir. 2009); *Snell Island SNF LLC v. NLRB*, 568 F.3d 410 (2d Cir. 2009), petition for cert. filed 78 U.S.L.W. 3130 (U.S. Sept. 11, 2009) (No. 09-328); *New Process Steel v. NLRB*, 564 F.3d 840 (7th Cir. 2009), cert. granted 130 S.Ct. 488 (2009); *Northeastern Land Services v. NLRB*, 560 F.3d 36 (1st Cir. 2009), petition for cert. filed 78 U.S.L.W. 3098 (U.S. Aug. 18, 2009) (No. 09-213). But see *Laurel Baye Healthcare of Lake Lanier, Inc. v. NLRB*, 564 F.3d 469 (D.C. Cir. 2009), petition for cert. filed 78 U.S.L.W. 3185 (U.S. Sept. 29, 2009) (No. 09-377).

the certified unit does not constitute a unit appropriate for the purposes of collective bargaining.²

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Texas corporation, has been engaged in the hotel/hospitality industry including operating a hotel located in Rosemont, Illinois (the Respondent's facility). During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations described above, has received gross revenues in excess of \$500,000 and purchased and received goods at the Respondent's facility from points located directly outside the State of Illinois in excess of \$50,000.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, UNITE HERE Local 450, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the representation election held on June 19, 2009, the Union was certified on September 10, 2009, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and part-time housekeeping and laundry employees, including room attendants, laundry attendants, house attendants, overnight house attendant, and housekeeping supervisors employed by the Respondent at its facility located at 9700 Balmoral, Rosemont, Illinois; but excluding all other employees, managers, assistant managers, office clerical employees and guards,

² In addition to denying that the unit is appropriate, the Respondent maintains that the Board is not properly constituted as required by Sec. 3(b) of the Act and did not have the authority to deny the Respondent's request for review in the underlying representation proceeding. This argument is without merit for the reasons set forth in fn. 1.

professional employees and supervisors as defined in the Act.

The Union continues to be the exclusive collectivebargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

On September 8 and 23, October 2, 6, and 8, 2009, the Union, by telephone calls to the Respondent's counsel and the Respondent's General Manager Jeremy Schaeffer, requested that the Respondent meet and bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

On September 24 and 28, 2009, the Union, by telephone calls to the Respondent's general manager, requested that the Respondent meet and bargain collectively with the Union as the exclusive collective-bargaining representative of the unit.

Since September 8, 2009, the Union has requested the Respondent to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit. Since September 8, 2009, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the unit. We find that this failure and refusal constitutes an unlawful failure and refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since September 8, 2009, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Aimbridge Employee Service Corporation d/b/a Aloft Chicago O'Hare, Rosemont, Illinois, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Failing and refusing to recognize and bargain with UNITE HERE Local 450 as the exclusive bargaining representative of the employees in the bargaining unit.
- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and part-time housekeeping and laundry employees, including room attendants, laundry attendants, house attendants, overnight house attendant, and housekeeping supervisors employed by the Respondent at its facility located at 9700 Balmoral, Rosemont, Illinois; but excluding all other employees, managers, assistant managers, office clerical employees and guards, professional employees and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Rosemont, Illinois, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 13 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 8, 2009.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 29, 2010

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union Choose representatives to bargain with us on your behalf Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with UNITE HERE Local 450 as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and part-time housekeeping and laundry employees, including room attendants, laundry attendants, house attendants, overnight house attendant, and housekeeping supervisors employed by us at our facility located at 9700 Balmoral, Rosemont, Illinois; but excluding all other employees, managers, assistant managers, office clerical employees and guards, professional employees and supervisors as defined in the Act.

AIMBRIDGE EMPLOYEE SERVICE CORPORATION D/B/A ALOFT CHICAGO O'HARE